United Nations A/71/385

General Assembly

Distr.: General
14 September 2016

Original: English

Seventy-first session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Rights to freedom of peaceful assembly and of association**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, submitted in accordance with Human Rights Council resolution 24/5.

* A/71/150.
** The present report was submitted after the deadline in order to reflect the most recent developments.

16-15867 (E) 260916

Please recycle

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Summary

The present report examines the exercise and enjoyment of the rights to freedom of peaceful assembly and of association in the workplace, with a focus on the most marginalized portions of the world's labour force, including global supply chain workers, informal workers, migrant workers, domestic workers and others.

Contents

		Page
I.	Introduction	3
II.	Conceptual framework	4
III.	Challenges to workers' rights to freedom of peaceful assembly and of association: global pressures on workers' rights and State response	6
	A. Migrant workers	8
	B. Women workers	11
	C. Domestic workers	13
IV.	International legal framework	14
	A. International and regional human rights instruments	14
V.	Conclusions and recommendations	26

I. Introduction

1. The present report is the fourth report of the Special Rapporteur submitted to the General Assembly in accordance with Human Rights Council resolution 32/32.

2. In this report, the Special Rapporteur addresses the environment essential to the realization of the rights to freedom of peaceful assembly and of association in the context of labour, and highlights laws, practices and systemic issues that violate those rights.[1] The Special Rapporteur notes that labour rights are workers' human rights.[2] Freedom of peaceful assembly and association are foundational rights precisely because they are essential to human dignity, economic empowerment, sustainable development and democracy. They are the gateway to all other rights; without them, all other human and civil rights are in jeopardy.

3. States are obligated under international law to respect, protect and fulfil workers' rights to freedom of peaceful assembly and of association. Those obligations include both positive and negative duties. Moreover, States are obliged to uphold those rights both "within their national jurisdiction and when they act at the international arena, whether individually, bilaterally or multilaterally" (see A/69/365, para. 16).

4. In many cases, States fail to protect or enforce those fundamental rights and often do not create an enabling environment for even the minimum exercise of those rights, disenfranchising millions of workers. That exacerbates global inequality, poverty, violence and child and forced labour, and directly contributes to problems such as human trafficking and slavery. This report takes into account the impact of globalization on the enjoyment of the rights of disenfranchised workers, including the roles played by global governance processes, States, employers and other relevant stakeholders in respecting, protecting and fulfilling those rights.

5. This report also provides recommendations on how States can promote improved respect for workers' assembly and association rights, thereby strengthening the rule of law, including workers' access to justice, while reducing inequality, poverty and disenfranchisement. The recommendations are based on international human and labour rights standards and instruments, and were developed in consultation with civil society, human rights, women's rights, States and labour rights organizations.

6. In preparing for this report, the Special Rapporteur convened an expert meeting on 5 and 6 May 2016 in Diani, Kenya. He benefited greatly from the discussions, and expresses his gratitude to the Solidarity Center and the International Centre for Not For Profit Law for co-organizing the event, and all the participants for their contributions. He further expresses appreciation to those who

[1] The Special Rapporteur is conscious of the language in paragraph 5 (g) of Human Rights Council resolution 15/21, which established his mandate, advising against the duplication of work already conducted by the International Labour Organization and its specialized supervisory mechanisms. The broader right to freedom of association, however, unequivocally applies in the workplace and there can be no serious discussion of association and assembly rights globally without considering the challenges surrounding workers' enjoyment of their rights.

[2] For the purpose of this report, the Special Rapporteur uses the term "worker" in its broadest possible context.

shared their experiences through other means, such as responding to his questionnaire. The Special Rapporteur also took into account relevant elements of work available within the United Nations system.[3]

7. Finally, the Special Rapporteur wishes to extend his deepest appreciation to the Solidarity Center for the research assistance it provided, which extensively informed this report.

II. Conceptual framework

8. In recent decades, economic globalization, implemented with as few regulations on companies and capital as possible, has been touted by many economists as an essential vehicle to global prosperity and the end of poverty. The economic system that grew out of that philosophy has indeed led to a rise in global economic productivity and wealth, but it has also contributed to a dramatic rise in the power of large multinational corporations and concentrated wealth in fewer hands. At the same time, States' power to regulate those business entities has eroded. Further, the world's recent economic growth has not been shared equally. Productivity and economic output have increased, but so has inequality, with the fruits of that growth going primarily to the wealthiest.[4]

9. Unconstrained power, whether public or private in origin, is a critical threat to the protection of human rights, including workers' rights to freedom of peaceful assembly and of association. The worldwide crackdown on those rights is contributing to a global crisis of governance. Multinational corporate wealth is multiple times greater than that of many States.[5] While lead multinationals are legally responsible for their operations within their domestic nation States, those laws do not extend to their actions abroad and they are not legally accountable for the vast number of rights violations that occur in multiple countries down their supply chains. Workers, on the other hand, are bound and restricted by the national laws where they work. Moreover, labour's traditional tools for asserting rights — trade unions, strikes, collective bargaining and so on — have been significantly weakened across the globe. That situation has effectively allowed the global supply chain to override sovereign democracy.

10. The majority of the world's workers, including informal, women, domestic, migrant and agricultural workers and day labourers, are often excluded from national legal protective frameworks, leaving them unable to exercise their

[3] Some situations mentioned in the report have been the subject of communications sent to Governments, and of press releases and reports issued by special procedures mandate holders and high-level officials of the United Nations.

[4] See "An economy for the 1 per cent: how privilege and power in the economy drive extreme inequality and how this can be stopped", *Oxfam Briefing Paper*, No. 210 (18 January 2016). Available from https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp210-economy-one-percent-tax-havens-180116-en_0.pdf.

[5] See Nicholas Freudenberg, "The 100 largest government and corporations by revenue", 27 August 2015. Available from www.corporationsandhealth.org/2015/08/27/the-100-largest-governments-and-corporations-by-revenue/.

fundamental rights to associate or assemble, and without access to remedies when their rights are violated.[6]

11. Without assembly and association rights, workers have little leverage to change the conditions that entrench poverty, fuel inequality and limit democracy. The need to maintain paid work is all-consuming: so many workers toil long hours for low wages in unsafe and unhealthy environments, risking disease, injury and death. They work without basic social protections such as health care, education, pensions or, in the case of trafficked workers, the right to choose or leave employment. The impact of the lack of assembly and association rights is compounded for migrant workers by harsh immigration laws, unscrupulous labour recruitment organizations, militarized labour systems and rights-restricted structures in export processing zones. Migrant domestic and agricultural workers, often excluded from labour law protection both at home and abroad, are doubly exploited and marginalized.

12. Women in the global economy are often relegated to low-paying, low-skills jobs. Persistent gender-based violence suppresses the individual and collective assertion of their rights to resist exploitative/abusive employers or State authorities. Further, certain groups of workers, including women, internal and external migrants, racial, ethnic, religious and sexual minorities, dispossessed rural workers and others, are often disenfranchised from the start by their status, making it more difficult to assert rights.

13. Disenfranchisement is the shared condition of these workers and predominates across countries and global supply chains. Whether intentional or not, the legal environment for these workers promotes labour markets that fundamentally depend on powerless workers and a low-wage environment. Employers and others who evade the law and disrespect standards gain a competitive advantage over compliant employers, at the cost of workers' rights to freedom of peaceful assembly and of association.

14. Further, the lack of effective cross-border and national legal and enforcement frameworks rewards and spreads non-compliance, even lawlessness. Violence by State and private actors against trade unionists, rights activists and peacefully striking workers often deals the final blow to workers' attempts to exercise their assembly and association rights.

15. States' failure to enforce laws and regulations has strongly contributed to the inability of workers to exercise their assembly and association rights. Without any realistic legal or democratic political recourse, workers are condemned to a new poverty. A report of the International Labour Organization (ILO) on the end to poverty initiative notes: "Poverty does not simply 'happen' to our world of work. Rather, our world of work and our labour markets are generating poverty, or at least proving inadequate to get rid of it".[7] Whether wilful or simply inadequate, decision-

[6] See "Unprotected labour: what role for unions in the informal economy?", Labour Education 2002/2, No. 127 (International Labour Organization (ILO), 2002). Available from www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_111464.pdf.

[7] International Labour Organization, *The End to Poverty Initiative: The ILO and the 2030 Agenda*, ILC.105/DG/IB (Geneva, 2016), para. 37.

and law-making have weakened workers' ability to exercise fundamental rights and created a legal system that is unenforceable against either States or multinational enterprises and fails to protect those rights.

16. The rights to freedom of peaceful assembly and of association are fundamental worker rights. Since they enable people to voice and represent their interests, they are key to the realization of both democracy and dignity, to holding Governments accountable and to empowering human agency. These rights are also a means to level the unequal relationship between workers and employers, thereby helping workers correct abuses and gain access to fair wages, safe working conditions[8] and a collective voice.

17. At the same time, the global attack on labour rights has made it disturbingly clear that the old ways of defending workers' rights are no longer working. Our world and its globalized economy are changing at lightning pace, and it is critical that the tools we use to protect labour rights adapt just as quickly. A first step towards that goal is to obliterate the antiquated and artificial distinction between labour rights and human rights generally. Labour rights are human rights, and the ability to exercise those rights in the workplace is a prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.

III. Challenges to workers' rights to freedom of peaceful assembly and of association: global pressures on workers' rights and State response

18. The rise of multinational companies has driven structural changes in the global economy aimed at cutting costs, increasing corporate profits and limiting corporate responsibility to workers.[9] Production and the provision of services are divided among different places with different employers in different countries. That has allowed lead firms to shift production of goods and services to companies in countries with lower costs and fewer regulations, putting pressure on manufacturers and service providers in global supply chains to cut costs.[10] These structural shifts have drastically changed traditional employment relationships and systems.

19. Today, an estimated 60.7 per cent of the world's workers labour in the informal economy, where employment relationships are not legally regulated or

[8] See Virginia Mantouvalou, "Organizing against abuse and exclusion: the associational rights of undocumented workers", in Cathryn Costello and Mark Freedland, eds., *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford, United Kingdom of Great Britain and Northern Ireland, Oxford University Press, 2014), p. 381.

[9] See Radhika Balakrishnan, Lisa McGowan and Cassandra Waters, "Transforming women's work: policies for an inclusive economic agenda" (American Federation of Labour and Congress of Industrial Organizations, Solidarity Center and Rutgers University, 2016), p. 10.

[10] See International Labour Organization, *Decent Work in Global Supply Chains*, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_468097.pdf.

socially protected (another 13 per cent work on fixed-term contracts).[11] In some developing countries, informal jobs comprise up to 90 per cent of available work.[12]

20. While the informal economy has always existed, deregulation and the development of global supply chains have exponentially expanded its growth. The informal economy includes self-employed workers, employees of informal enterprises, day labourers, market vendors, temporary, part-time or contract workers and more.[13] Informal workers can be teachers, agricultural workers, call centre workers, taxi drivers, waste pickers or workers who make deliveries, among others.

21. Informal work is often characterized by poor employment conditions, low wages and lack of protection against non-payment of wages, layoffs without notice or compensation, compulsory overtime, unsafe and unhealthy working conditions, and the absence of social benefits such as health insurance, sick leave, pensions or social security.[14] Because they are generally outside the framework of labour law protection, informal workers have little access to justice and less opportunity to assemble, form or join unions, or bargain for higher wages or better working conditions. Their lack of fundamental rights leaves them with little ability to hold accountable those who have power over them and strips them of the power to change their conditions. States, working with employers, are choosing who is or is not covered by union rights.

22. Millions of informal workers labour in global supply chains, where some of the worst abuses of freedoms of association and peaceful assembly are found and where migrant workers are often concentrated.[15] States often weaken labour rights in order to attract investment, establishing special export processing zones where freedoms of peaceful assembly and of association are either sharply curtailed or explicitly prohibited. States may also use investor agreements as excuses to weaken labour standards.

23. Global supply chains are putting downward pressure on wages and working conditions, and distancing workers from their rights to freedom of association because workers fill permanent jobs but are denied permanent employee rights. These arrangements — found in both formal and informal work, including part-time, short-term or temporary contracts, on-call schedules, multilayered

[11] See Martha Alter Chen, *The Informal Economy: Definitions, Theories and Policies*, WEIGO Working Paper, No. 1 (August 2012). Available from http://wiego.org/sites/wiego.org/files/publications/files/Chen_WIEGO_WP1.pdf, and ILO, *World Employment Social Outlook: The Changing Nature of Jobs* (Geneva, 2015). Available from www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_368626.pdf.

[12] See Malcolm Sharara, "Many Zimbabweans live below food poverty-World Food Programme", *Fin24*, 19 May 2016. Available from www.fin24.com/Economy/many-zimbabweans-live-below-food-poverty-line-wfp-20160519.

[13] See Martha Alter Chen, *The Informal Economy: Definitions, Theories and Policies*, WEIGO Working Paper, No. 1 (August 2012). Available from http://wiego.org/sites/wiego.org/files/publications/files/Chen_WIEGO_WP1.pdf.

[14] See www.ilo.org/global/topics/employment-promotion/informal-economy/lang--en/index.htm.

[15] See International Labour Organization, *Decent Work in Global Supply Chains*, ILC.105/IV (Geneva, 2016). Available from www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_468097.pdf, pp. 25 and 32.

subcontracts or franchises,[16] and bogus self-employment schemes — are designed to drive down costs.[17] As a result of the widespread use of this practice, 1.5 billion people — 46 per cent of the world's total number of workers — are working in so-called "precarious employment". In both Southern Asia and sub-Saharan Africa, more than 70 per cent of workers are employed that way.[18]

24. Women tend to be concentrated in the bottom levels of the global supply chain, in sectors with lower pay, less prestige and fewer benefits, such as the garment, electronic assembly and service sectors.[19] More women than men work in agriculture, where they comprise approximately 70 per cent of the informal workforce.[20] Further, women usually constitute 60 to 90 per cent of the workforce in special economic zones, where worker protections are sharply reduced or eliminated in order to attract foreign investment.[21]

25. Lead firms contribute to rights violations through sourcing practices and the threat of exit, should costs increase, and they are usually immune to legal accountability. In most cases, there is no jurisdiction or legal cause of action over the enterprise in its home country for the violations that are eventually carried out by a supplier.[22]

26. In some countries administrative or judicial processes are too slow, weak or corrupt. When workers who seek to associate and form a union are fired, they find no effective remedy, either at home against the local firm, or abroad against the lead firm that may have contributed to the violation. Without legal consequences, the situation is unlikely to change.

A. Migrant workers

27. Globalization is taking place in the context of the largest migration of people in human history, from rural to urban areas, within countries and across borders. According to recent ILO estimates, the world has 150.3 million migrant workers.[23] An estimated 112.3 million of them (74.7 per cent) are in high-income countries.[24]

---

[16] See Radhika Balakrishnan, Lisa McGowan and Cassandra Waters, "Transforming women's work: policies for an inclusive economic agenda" (American Federation of Labour and Congress of Industrial Organizations, Solidarity Center and Rutgers University, 2016), p. 10.

[17] See International Labour Organization, *Decent Work in Global Supply Chains*, p. 23. Available from http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_468097.pdf.

[18] See International Labour Organization, *World Employment and Social Outlook: Trends 2016* (Geneva, 2016).

[19] See Radhika Balakrishnan, Lisa McGowan and Cassandra Waters, "Transforming women's work: policies for an inclusive economic agenda", (American Federation of Labour and Congress of Industrial Organizations, Solidarity Center and Rutgers University, 2016), p. 7.

[20] Ibid.

[21] Ibid., p. 11.

[22] See International Labour Organization, *Decent Work in Global Supply Chains*, ILC.105/IV (Geneva, 2016), p. 42. Available from www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_468097.pdf.

[23] See International Labour Organization, *Global Estimates of Migrant Domestic Workers: Results and Methodology* (Geneva, 2015).

[24] Ibid.

They migrate to support their families and improve their future, but their lack of rights and agency in the workplace often leaves them, and their children, mired in poverty.

28. Low-wage migrant workers face severe economic exploitation, social exclusion and political disenfranchisement. They are often denied their freedoms of peaceful assembly and of association because of their irregular status or by structural barriers in legal channels that systematically disempower workers. Exorbitant recruitment fees leave them with unrepayable debt. In the destination country, they are often paid low wages or not paid at all. They are subject to unsafe and unhealthy working and living conditions, and gender-based violence. They are typically without access to health care, leave or other social benefits. Many find themselves trafficked, in conditions of forced labour or slavery, isolated, unpaid, with restricted freedom of movement and no access to justice. Because most migrant workers are effectively barred from forming and joining unions, they are unable to advocate to improve wages and working conditions. Migrants have become a massive, disposable, low-wage workforce excluded from remedies or realistic opportunities to bargain collectively for improved wages and working conditions.

29. Having legal status does not ensure workers can exercise their fundamental rights. Most temporary or circular migration programmes structurally deny or inhibit rights to assembly and association and leave workers at the mercy of employers. Two such programmes are the Middle East *kafala* and United States guest-worker programmes. In many Middle East countries (such as Bahrain, Kuwait, Oman, Saudi Arabia and Qatar), this hyper-rigid system ties a migrant worker's presence in the country to a visa sponsored by a citizen. Workers' ability to reside, work or even leave the country is subject to the approval and whims of a migrant's sponsor, who has near total control over the worker's existence.[25] Nearly the same is true in United States guest-worker programmes, where visas are tied to specific employers.[26] From a legal standpoint, these States have delegated oversight, control and responsibility for foreign nationals to private companies and individuals. Such devolution of responsibility has led to gross abuses and denial of fundamental rights.

30. Every year the United States has more than 100,000 guest workers on temporary H-2 work visas in sectors like landscaping, construction, seafood processing and agriculture. Although they are documented migrants, guest workers report being cheated of their wages, threatened with guns, beaten, raped, starved and imprisoned. Some have died on the job.[27] The link between the visa and employer provides a coercive element: workers who complain about working conditions can

[25] See International Trade Union Confederation (ITUC), "The case against Qatar: host of the FIFA 2022 World Cup — ITUC special report" (Brussels, 2014). Available from www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf.

[26] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20317&LangID=E#sthash.mXdGRS7D.dpuf.

[27] See Jessica Garrison, Ken Bensinger and Jermy Singer-Vine, "The new American slavery: invited to the United States, foreign workers find a nightmare", 24 July 2015. Available from https://www.buzzfeed.com/jessicagarrison/the-new-american-slavery-invited-to-the-us-foreign-workers-f?utm_term=.ywzOzJKYW#.gp0jykNYK.

be fired, and must leave the country or face deportation. This contingent relationship quells workers' efforts to exercise freedom of association and assembly.[28] Workers who attempt to exercise their rights are often blacklisted by employers, who use the threat of denied future work opportunities to silence workers.[29]

31. In the United Kingdom, gang-master-controlled work in the hospitality, food-processing and agriculture sectors often exploits migrant workers through wage theft or confiscation of passports. The prospect of dismissal and loss of the legal right to work and remain in the country chills the exercise of rights by these workers. Because police investigations tend to focus more on immigration enforcement than claims of serious maltreatment of migrant workers,[30] access to justice is denied. Forced labour is also a significant and growing problem in the United Kingdom.[31]

32. Intimidation is common to the migrant worker experience. In 2015, 245 Zimbabwean migrant workers were harassed, intimidated and suffered retaliation (and four of them physical violence) after they organized to ask for a wage increase on a vegetable farm in South Africa. They had worked 12-hour days, seven days a week, and 17-hour days during the vegetable harvest, but were paid about half the minimum wage.[32] They were forcibly evicted in September 2015, but later vindicated in court, when the judge found they were owed back pay or reinstatement.[33]

33. Violence with impunity is also common. In Mexico, migrant farmworkers at one of the country's biggest tomato exporters were physically assaulted when they complained about lack of food or tried to leave the work camp where they were kept "as prisoners". Camp bosses threatened workers who demanded their illegally withheld pay. The indebted workers could not enjoy their assembly and association rights for fear of losing wages that would not be paid until the harvest. The company received World Bank financing and supplied major United States grocers.[34]

[28] See Shannon Lederer, "Top 10 ways guest worker visa programmes undermine immigrant rights", 9 September 2015. Available from www.aflcio.org/Blog/Political-Action-Legislation/Top-10-Ways-Guest-Worker-Visa-Programs-Undermine-Immigrant-Rights.

[29] Ibid.

[30] Submission from UNISON.

[31] See Hsiao-Hung Pai, "The lessons of Morecambe Bay have not been learned", *The Guardian*, 3 February 2014. Available from https://www.theguardian.com/commentisfree/2014/feb/03/morecambe-bay-cockle-pickers-tragedy.

[32] See Tula Connell, "70 migrant workers fled abuse in South Africa", 22 January 2016. Available from www.solidaritycenter.org/70-migrant-farm-workers-fled-abuse-in-south-africa/.

[33] See Tula Connell, "Zimbabwe migrant farm workers see dawn of justice", 18 May 2016. Available from www.solidaritycenter.org/zimbabwe-migrant-farm-workers-win-court-case/.

[34] See Richard Marosi, "Desperate workers on a Mexican mega-farm: 'they treated us like slaves'", *Los Angeles Times*, 10 December 2014. Available from http://graphics.latimes.com/product-of-mexico-labor/.

B. Women workers[35]

34. Today only about half of women globally are in the labour force, compared to more than three-quarters of men.[36] Three-quarters of their employment is in informal and unprotected work. That makes women far less likely than men to be in trade unions and enjoy work-related protections, including assembly and association rights.

35. Discrimination, abuse and relegation to jobs at the bottom of the global economy undermine women workers' ability to join and form organizations that defend their interests. Worldwide, women's employment is concentrated in low-wage work at the far reaches of the global supply chain where social protections, including those afforded by labour law, are scarce.

36. The global gender wage gap, currently estimated at 77 per cent,[37] is a further indicator of discrimination against women workers. Gender-based job restrictions enshrined in law, in contravention of international conventions and standards, further depress women's wages and lower their employment rate, generating long-lasting economic and social consequences for themselves, their family and their country.[38] A World Bank survey of 173 countries found that 155 have at least one law impeding women's economic opportunities.[39] Legal restrictions on the type of employment women can access still exist in 79 countries.[40]

37. Hiring practices also give employers free reign to channel women into low-wage, low-status jobs.[41] Women may be concentrated on the global economy's most unprotected positions owing to many employers' belief that women workers are more docile, dexterous or uncomplaining, and will make fewer demands.[42]

38. Gender inequality in the family colludes with discrimination at work to further depress women's worker and human rights. For example, the disproportionate burden of household work falls to women across cultures,[43] curtailing their mobility and limiting their employment opportunities. Shouldering the burden of unpaid care disenfranchises women and distances them from their rights to association at work because it forces women into part-time, on-call, at-home or underpaid care labour to

---

[35] For more on the issues facing women in the workplace, see A/HRC/26/39.

[36] See United Nations Entity for Gender Equality and the Empowerment of Women, *Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights* (New York, 2015), p. 74.

[37] See International Labour Organization, "ILO: large gender gaps remain across broad spectrum of global labour market", 8 March 2016. Available from www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_457267/lang--en/index.htm.

[38] See Arancha González, "In 155 countries women still face legal discrimination. The consequences are huge", *The Guardian*, 3 December 2015. Available from https://www.theguardian.com/global-development-professionals-network/2015/dec/03/women-legal-discrimination-worldwide-consequences.

[39] Ibid.

[40] See World Bank, *Women Business and the Law 2014: Removing Restrictions to Enhance Gender Equality — Key Findings* (Washington, D.C., 2013).

[41] See Radhika Balakrishnan, Lisa McGowan and Cassandra Waters, "Transforming women's work: policies for an inclusive economic agenda", (American Federation of Labour and Congress of Industrial Organizations, Solidarity Center and Rutgers University, 2016), p. 5.

[42] Ibid.

[43] Ibid.

enable them to continue their unpaid work.[44] That often forces women into the informal, unprotected economy. Women generally work those jobs over longer lifespans than men, without job-related social protections, which exacts a heavy toll[45] that includes entrenched impoverishment.

39. Perhaps the fiercest deterrent to the exercise of the rights to freedom of peaceful assembly and of association for women is gender-based violence, which affects more than 35 per cent of women globally.[46] While violence against women generally is increasingly in the global spotlight, its occurrence at work continues to be neglected or ignored.

40. Gender-based violence at work pervades[47] employment in the formal and informal economy,[48] and often intersects with other discrimination and exploitation, particularly based on race, ethnicity, country of origin and age. Gender-based violence at work includes physical abuse; attempted murder and murder; sexual violence; verbal abuse and threats; bullying; psychological abuse and intimidation; sexual harassment; economic and financial abuse; stalking; and more.

41. A recent survey in European Union countries found that 75 per cent of women in management and higher professional positions and 61 per cent of women in the service sector have experienced some form of sexual harassment.[49] Women workers in countries as diverse as Bangladesh, Cambodia,[50] the Dominican Republic,[51] Haiti,[52] Jordan, Swaziland[53] and Tunisia[50] have reported verbal, physical or sexual abuse, sexual harassment or rape at work. Some 90 per cent of female Kenyan tea and export-processing workers say they have witnessed or experienced sexual abuse at work; nearly all said they were afraid to report it for fear of losing their job.[54]

---

[44] Ibid.

[45] Ibid.

[46] See World Health Organization, "Violence against women: intimate partner and sexual violence against women — fact sheet", available from www.who.int/mediacentre/factsheets/fs239/en/.

[47] Lisa McGowan, "Gender-based violence at work", Solidarity Center (forthcoming).

[48] Ibid.

[49] See European Union Agency for Fundamental Rights, *Violence against Women: An EU-Wide Survey — Main Results* (Luxembourg, Publications Office of the European Union, 2014).

[50] See Megane Ghorbani, "Informal work in Tunisia: a factor to be included in strategies addressing gender-based violence", 20 June 2014. Available from www.awid.org/news-and-analysis/informal-work-tunisia-factor-be-included-strategies-addressing-gender-based.

[51] See www.laborrights.org/publications/sexual-harassment-export-processing-zones-dominican-republic; Lourdes Pantaleón, "Sexual harassment in the export processing zones of the Dominican Republic", May 2003. Available from http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1484&context=globaldocs.

[52] See International Labour Organization and International Finance Corporation, *Better Work Haiti: Garment Industry 12th Biannual Synthesis Report Under the HOPE II Legislation* (Geneva, 2016).

[53] See All Africa, "Swaziland: Swazi textile workers exploited", 1 November 2014. Available from http://allafrica.com/stories/201411031316.html.

[54] See Regina G. M. Karega, "Violence against women in the workplace in Kenya: assessment of workplace sexual harassment in the commercial agricultural and textile manufacturing sectors in Kenya", May 2002. Available from www.laborrights.org/sites/default/files/publications-and-resources/Kenya.pdf.

42. Women union leaders in Guatemala are "especially targeted"[55] with threats, violence and murder. Women workers report being punched to force miscarriages, or abducted while waiting for transportation to and from work.[56] In Guatemala, more than 5,000 women and girls were killed between 2008 and 2015.[57] The Government of Guatemala has adopted a law against femicide, but rather than use the law to punish and pursue those responsible, it is often used to attack union leaders.[55]

43. Without the ability to organize and take collective action at work, too many of the world's working women are forced to labour in climates of violence and fear. The ever-present threat of the loss of employment, health, opportunities to provide for one's family and, potentially, one's life, exacerbates the challenge for workers to defend their basic rights to freedom of peaceful assembly and association.

44. Gender-based violence at work is a critical human rights violation that prevents the exercise of rights, including the freedoms of peaceful assembly and of association. Yet, despite its prevalence and corrosive impact, not a single binding international standard addresses the issue.

C. Domestic workers

45. Situated at the intersections of gender, race, migration and informality, domestic workers represent a large component of the global workforce excluded from the rights to freedom of peaceful assembly and to association. ILO estimates that 67 million people globally are domestic workers, and 80 per cent of them are women;[58] and that 11.5 million migrant workers are domestic workers, about three-quarters of them women.[23]

46. Many countries do not recognize domestic labourers as "workers" under the law,[59] meaning that they have little ability to exercise their assembly and association rights at work. Roughly 90 per cent of domestic workers lack effective social protections, leaving them and their families in economically and socially vulnerable situations.[28]

47. Migrant domestic workers are, like other migrants, often unprotected by worker rights. They are subject to extreme abuses, including forced labour and trafficking and gender-based violence. They may be deprived of food and sleep,

[55] See Callum McSorley, "Guatemala: the world's most dangerous place for trade unions", *International Network of Street Papers*, 28 October 2013. Available from www.streetnewsservice.org/news/2013/october/feed-400/guatemala-the-world%E2%80%99s-most-dangerous-place-for-trade-unions.aspx.

[56] Ibid.

[57] See Mimi Yagoub, "Why does Latin America have the world's highest female murder rates?", 11 February 2016. Available from www.insightcrime.org/news-analysis/why-does-latin-america-have-the-world-s-highest-female-murder-rates.

[58] See International Labour Organization, "Decent work for domestic workers: achievements since the adoption of C189", briefing note. Available from www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/briefingnote/wcms_490778.pdf.

[59] See International Domestic Workers Federation website, available from www.idwfed.org/en.

denied medical treatment and prohibited from leaving their workplace.[60] Zainab Yusuf, a Kenyan worker trafficked to Saudi Arabia, had to work 21 hours a day cleaning and caring for her employers' seven children. She could not leave the house or contact her family, and faced ongoing sexual harassment and physical abuse from her employer and his sons.[61] Under such conditions, domestic workers have no opportunity to peacefully assemble or to associate.

48. Paid domestic work is the quintessential precarious work.[62] Examples of laws that differentiate domestic workers from other workers abound. The United Kingdom excludes domestic workers from limits on hours of work, minimum wage and health and safety provisions. Canada, Finland Japan and Switzerland similarly exclude domestic workers from minimum wage legislation.[63]

49. Many countries, including the United Kingdom and France, exclude domestic workers from the jurisdiction of labour inspectorates in deference to employers' privacy.[64] Canada (Ontario), Ethiopia and Jordan exempt domestic workers from laws covering trade union representation.[65] Migration law often also treats domestic workers differently from other workers.[66] The Special Rapporteur notes, however, as a positive step, that 30 countries have now extended labour protection to domestic workers.[58]

IV. International legal framework

A. International and regional human rights instruments

50. The rights to freedom of peaceful assembly and of association are recognized in numerous international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

51. The International Covenant on Civil and Political Rights provides that States must respect assembly and association rights and ensure that all people within their territory and jurisdiction enjoy them, without distinction of any kind, through law, the provision of remedies and effective enforcement.[67] States must also refrain from

[60] Presentation by Teresa Wabuko, Kenya Union of Domestic, Hotels, Education Institutions and Hospital Workers Union, at the United Nations expert consultation on freedom of assembly and association, 5 May 2016.

[61] Presentation by Zainab Yusuf, Kenya Union of Domestic, Hotels, Education Institutions and Hospital Workers Union, at the United Nations expert consultation on freedom of assembly and association, 5 May 2016.

[62] See Virginia Mantouvalou, "Human Rights for precarious workers: the legislative precariousness of domestic labour", Labour Rights Institute Online Working Papers, 2/2012. Available from www.ucl.ac.uk/laws/lri/papers/VM%20precarious%20workers.pdf.

[63] Ibid.

[64] Ibid.

[65] Ibid.

[66] Ibid.

[67] See International Covenant on Civil and Political Rights, arts. 2 (2) and 2 (3) (a-c).

violating rights recognized by the Covenant, and are accountable for violations of those rights when the infringement occurs as a result of its failure to secure the right in domestic law and practice. The desire to maximize economic profit or create attractive investment climates does not lower the obligations and responsibilities of the State. The Covenant also obliges States to combat discrimination by private actors,[68] including in employment.[69]

52. The principle of non-discrimination applies to all rights, and States are obliged to ensure that traditionally disenfranchised groups are able to enjoy their rights to freedom of peaceful assembly and of association. Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women requires States to take positive measures to secure equal enjoyment of rights for women, including assembly and association rights. The Committee on Migrant Workers[70] requires States to encourage self-organization among migrant workers irrespective of their migration status, and to inform them about associations that can provide assistance.

53. The International Covenant on Economic, Social and Cultural Rights requires that States ensure that people can organize and join workers' associations that address their concerns, and that particular attention be given to domestic workers, rural women workers, women working in female-dominated industries and women working at home, who are often deprived of that right.[71]

54. Both trade unions and the right to strike are fundamental tools to achieving workers' rights, as they provide mechanisms through which workers can stand up for their interests collectively, and engage with big business and government on a more equal footing. The State is obligated to protect these rights for all workers.

55. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both explicitly protect the right to form and join trade unions. International human rights law also imposes upon States a duty to actively promote, encourage and facilitate the enjoyment of fundamental rights, including labour rights (A/70/266, para. 4). Further, the notion that States should promote trade unionism among workers is implicit in the International Covenant on Economic, Social and Cultural Rights. States must take measures to ensure that third parties do not interfere with union rights.

[68] Ibid., arts. 2 and 26.

[69] Human Rights Committee, *Franz Nahlik v. Austria*, decision on communication No. 608/1995, 22 July 1996 (CCPR/C/57/D/608/1995).

[70] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2, 28 August 2013 (CMW/C/GC/2).

[71] See Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016) on the right to just and favourable conditions of work (E/C.12/GC/23).

56. The right to strike has been established in international law for decades, in global and regional instruments, and is also enshrined in the constitutions of at least 90 countries.[72] The right to strike has, in fact, become customary international law.[73]

1. Instruments of the International Labour Organization

57. ILO, as the only global tripartite institution, plays a unique role in setting standards on fundamental principles and rights at work. Core ILO labour conventions include the Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), which calls on States to prevent discrimination against trade unions, protect employers' and workers' organizations against mutual interference and promote collective bargaining; and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), which protects workers who are exercising their right to organize, upholds the principle of non-interference between workers' and employers' organizations and promotes voluntary collective bargaining. These foundational rights are essential to the protection of other core labour rights. ILO signatory States are obliged to respect principles of freedom of association whether or not they have ratified the appropriate conventions.[74] The ILO Decent Work Agenda calls on countries to respect core conventions, provide for social protection, create decent jobs and engage in genuine social (tripartite) dialogue. Also of relevance, the ILO Domestic Workers Convention, 2011 (No. 189) sets standards for the effective promotion and protection of domestic workers' human rights.

2. States' obligations to respect, protect and fulfil the rights to freedom of peaceful assembly and association

Respect

58. States have the primary role in preventing or halting violations of workers' rights to freedom of peaceful assembly and of association, with clear obligations to protect, promote, facilitate and fulfil those rights, even in the global economy. Yet workers' ability to exercise their rights is in precipitous decline. Many States place obstacles, both in law and practice, that restrict workers' rights or fail to enforce

---

[72] See, for example, Clarence Wilfred Jenks, *The International Protection of Trade Union Freedom*, The Library of World Affairs, No. 35 (New York, Frederick A. Praeger, 1957), pp. 561-562; Paul O'Higgins, "International standards and British labour law", in Roy Lewis, *Labour Law in Britain* (Oxford, United Kingdom, Oxfordshire, 1986), p. 577; Breen Creighton, "The ILO and protection of freedom of association in the United Kingdom", in Keith D. Ewing, Conor A. Gearty and Bob A. Hepple, eds., *Human Rights and Labour Law: Essays for Paul O'Higgins* (New York, Mansell,1994), p. 2; ILO, *International Labour Standards: A Workers' Education Manual*, 3rd rev. ed. (Geneva, 1990), p. 106.

[73] See, for example, ILO Convention No. 87 of 1948, arts. 3, 8 and 10; International Covenant on Economic, Social and Cultural Rights of 1966, art. 8; International Covenant on Civil and Political Rights of 1966, art. 22; European Convention on Human Rights of 1950, art. 11; American Convention on Human Rights of 1969, art. 16.

[74] International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 1998). Available from www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm.

laws protecting those rights. The International Trade Union Confederation found that 50 of 141 countries surveyed had such restrictions.[75]

59. Some States have outright bans on all legitimate unions, including Saudi Arabia and the United Arab Emirates.[76] Other States, such as Qatar,[77] impose impermissibly broad restrictions, such as prohibiting public-sector employees from joining trade unions or participating in collective bargaining or strikes. Some laws restrict bargaining subjects, including wages, which hampers assembly and association rights, as workers are more reluctant to risk organizing when potential gains are so few.[78] States, such as China, that own or operate enterprises and do not permit the formation of independent unions violate association and assembly rights both as a government and employer (see E/C.12/CHN/CO/2, para. 23).

60. "Legislative precariousness" regarding the freedoms of association and of peaceful assembly is widespread globally, as is the lack of policy harmony surrounding it. States frequently pass laws that are not fully protective of assembly and association rights, explicitly restrict rights and exclude certain groups or limit certain components of rights. For example, in India, where tens of millions of workers are in the informal economy, the Government is working to increase the flexibility of labour laws to make it easier for employers to fire workers.[79]

61. When two pieces of legislation conflict, the gaps between them may provide an opportunity for rights violations to occur. States have an obligation to maintain clear and consistent standards in favour of assembly and association rights for all workers, across all laws, policies and practices. In the Philippines, the lack of policy coherence at the national level has resulted in conflicting policies on the rights to freedom of peaceful assembly and of association for public-sector workers. The executive order governing public-sector unions recognizes the right to collective bargaining agreements, but the Department of Budget Management imposes limits and budgetary restrictions, effectively undermining the right to negotiate in the public sector.[80]

62. Some States have used more general laws to restrict workers' assembly and association rights. In India, for example, the government of Karnataka used section 144 of the Criminal Procedure Code, which prohibits assemblies of more than

[75] See International Trade Union Confederation, "ITUC global rights index: the world's worst countries for workers" (Brussels, 2016). Available from www.ituc-csi.org/IMG/pdf/survey_ra_2016_eng.pdf.

[76] See International Trade Union Confederation, "Internationally recognized core labour standards in Saudi Arabia", report for the World Trade Organization (WTO) General Council review of the trade policies of Saudi Arabia, Geneva, 25 and 27 January 2012. Available from www.ituc-csi.org/internationally-recognised-core,10469, and "International recognized core labour standards in the United Arab Emirates", report for the WTO General Council review of the trade policies of the United Arab Emirates, Geneva, 27 and 29 March 2012. Available from www.ituc-csi.org/internationally-recognised-core,10867.

[77] International Labour Organization, case No. 2988 (Qatar), complaint date 28 September 2012. Available from www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO::P50001_COMPLAINT_FILE_ID:3079678:NO.

[78] Submission from Public Services Labour Independent Confederation, Philippines.

[79] Stratfor, "The difficulties of retooling the Indian economy", 20 July 2016. Available from https://www.stratfor.com/analysis/difficulties-retooling-indian-economy.

[80] Submission from Public Services Labour Independent Confederation, Philippines.

10 people, to stop protests by garment workers in Bengaluru in April 2016.[81] The Constitution of Zimbabwe protects assembly and association rights, but they are compromised by other criminal laws that punish acts and opinions detrimental to public order with up to five years in prison. The laws have been used to repress trade union and civil society freedom of association rights.[82] Similarly, in Swaziland, labour federation criticism of the Government resulted in the federation's deregistration.[83]

63. States that discriminate or exclude certain groups from protective legislation violate their obligations to respect and protect these rights, as well as the basic principle that these rights should be enjoyed by everyone equally. Authorities may not discriminate against any group or individual on grounds such as gender, immigration or residency status, language, social opinion, race, religion or sexual orientation. Enforcement of migration laws cannot take priority over respect for human rights law.

64. Racial discrimination can prevent workers from exercising their peaceful assembly and association rights, as in Colombia, where approximately 75 per cent of the workforce in Colombia's ports, primarily Afro-descendant workers, are employed under flexible contracts and not allowed to join unions or to bargain. Many of the thousands of trade unionists[84] in Colombia murdered between 1986 and 2011 were Afro-Colombian.[85]

65. In addition, States that use or allow the use of precarious and informal labour to avoid legal employment obligations, such as minimum wage rates and benefits (and often to avoid unionization), are failing to respect workers' assembly and association rights. Peru, for example, is increasingly using short-term contracts in the public sector.[86] Cambodia's new trade union law excludes informal workers, civil servants, teachers and domestic workers from its scope.[87] Also, the Republic of Georgia uses short-term contracts for many State and municipal employees and refuses to apply provisions of the labour code that require long-term or open-end employment contracts.[88]

---

[81] Submission by Youth for Unity and Voluntary Action, India.

[82] See www.ituc-csi.org/IMG/pdf/survey_ra_2013_eng_final.pdf.

[83] See International Trade Union Confederation, "New ITUC report on violations of trade union rights", 12 June 2013. Available from www.ituc-csi.org/new-ituc-report-on-violations-of.

[84] See Verdad Abierta, "Estadísticas Defensores de derechos humanos, sindicalistas, docentes y periodistas". Available from www.verdadabierta.com/cifras/3831-estadisticas-de-sindicatos-docentes-y-periodistas-.

[85] See Tula Connell, "Afro-Colombians fighting against discrimination at work", 12 March 2013. Available from www.solidaritycenter.org/afro-colombians-fighting-against-discrimination-at-work/.

[86] See Lucien O. Chauvin, "Peru submits Pacific trade pact to congress for approval", *Bloomberg Bureau of News Affairs*, 21 July 2016. Available from www.bna.com/peru-submits-pacific-n73[illegible]5176/.

[87] See Mong Palatino, "The trouble with Cambodia's new law on trade unions", *The Diplomat*, 18 April 2016. Available from http://thediplomat.com/2016/04/the-trouble-with-cambodias-new-law-on-trade-unions/.

[88] Solidarity Center, e-mail interview with Gocha Alexsandria, Project Director for the Solidarity Center's project on labour inspection in Georgia, 16 August 2016.

66. State restrictions on assembly and association rights, including the right to strike, frequently exceed parameters set by ILO Convention 87 and decades of case law. In countries where the right to strike is not legally prohibited, Governments attempt to justify restrictions in the name of public order, public security, the threat of terrorism, national interest or economic crisis.[89]

67. Restrictions often used include exclusion of categories of workers from the right to strike; excessive prerequisites required to hold a legal strike; inappropriate legal changes that allow public authorities to suspend or declare a strike illegal; and government and public arguments favouring restrictions on the right to strike.[90] Onerous requirements or excessive restrictions can make it almost impossible to conduct a legal strike, thereby removing one of the tools of last recourse for workers trying to bring unwilling employers to the bargaining table. Such restrictions constitute a violation of workers' rights to freedom of assembly and of association.

68. States are obliged to respect the rights to freedom of peaceful assembly and of association by refraining from interfering, directly or indirectly, with their exercise. Under international law, restrictions on the rights to peaceful assembly and to association and to form or join a trade union are permissible only where prescribed by law and as necessary in a democratic society in the furtherance of the legitimate interests enumerated in those instruments.[91] International law foresees the possibility of States restricting members of armed forces and police from exercising the right to freedom of association, and allows for States to restrict the right to strike for essential services and civil servants engaged in the administration of the State.[92] However, as with all restrictions, these should be the exception rather than the rule.

69. In many countries where rights to freedom of peaceful assembly and of association are constitutionalized, such as Bahrain, strikes are intentionally impeded. Some 92 countries exclude specific categories of workers from striking.[93] The law in India allows the Government to ban strikes in Government-owned enterprises. In Kazakhstan, workers in entities that provide "vital activities" (public transport, utilities and communications) may strike only if the "necessary range of services is provided based on a prior agreement with the local executive authorities".[94]

---

[89] See Edlira Xhafa, *The Right to Strike Struck Down? A Global Survey of Recent Trends*, FES Briefing (Berlin, Friedrich Ebert Stiftung, May 2016), p. 2. Available from www.fes.de/gewerkschaften/common/pdf/2016_FES_Briefing_Right_to_Strike.pdf.

[90] Ibid., pp. 2 and 3.

[91] See International Covenant on Civil and Political Rights of 1966, art. 22(2), and International Covenant on Economic, Social and Cultural Rights of 1966, art. 8(1)(a).

[92] See Organization for Security and Cooperation in Europe, "Venice Commission guidelines on freedom of peaceful assembly", 2nd ed., 9 July 2010. Available from www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)020-e.

[93] See International Trade Union Confederation, "ITUC global rights index: workers' rights weakened in most regions, worst year on record for attacks on free speech and democracy", 9 June 2016. Available from www.ituc-csi.org/ituc-global-rights-index-workers.

[94] International Labour Organization, "Memorandum of technical comments on the draft law on trade unions of Kazakhstan", June 2013, p. 5. See also Kazakhstan, Labour Code of 1 January 2016, art. 172 (2).

70. The Government of Egypt has shut down civic space, banning virtually all strikes and protests, and is cracking down on journalists and their union.[95] On 1 May 2016, police prevented hundreds of workers from meeting at the union building to commemorate International Workers' Day.[96]

71. On 14 November 2015, at a rally in the Republic of Korea, 20,000 police used tear gas and water cannons to disperse a protest attended by 100,000 demonstrators. Dozens were injured, and criminal proceedings were brought against 585 leaders and members of the Korea Confederation of Trade Unions. The Confederation president was sentenced to five years in prison (A/HRC/32/36, para. 41). The Special Rapporteur emphasizes again that charging peaceful assembly participants with criminal offenses violates the right to peaceful assembly.

72. The Special Rapporteur welcomes the fact that in Slovenia anyone has the freedom to join a trade union, and that a trade union of migrant workers was established and gained legal personality in February 2016.[97]

Protect

73. States are obligated to protect workers' peaceful assembly and association rights from interference by non-State actors, such as private-sector employers and enterprises. That includes an obligation to take steps to prevent, punish and provide redress abuses through effective law, policies and adjudication. The implementation of the norms is as significant as the norms themselves.

74. States with authoritarian governments may allow or encourage the establishment and the operation of State-sponsored workers associations and unions, with the aim of preventing the emergence of independent voices. China limits workers' rights to form labour associations and to elect their preferred union representation by giving monopolistic status to the All-China Federation of Trade Unions, which suppresses worker organizing.[98] Government-aligned union federations in Egypt (see E/C.12/EGY/CO/2-4, para. 13), the Russian Federation[99] and Viet Nam (see E/C.12/VNM/CO/2-4, para. 21) thwart workers' attempts to form independent unions, rarely represent worker interests, often sign weak collective bargaining agreements (without worker input) and actively prevent workers from exercising their assembly and association rights.

75. Other States generally fail to protect workers against employer violations or to enforce their own laws. In fact, many do not stop at benign neglect, but support or collude with employers to infringe upon workers' rights to peaceful assembly and to association. In the United States, Tennessee State officials reportedly offered nearly

[95] See http://anhri.net/?p=151666&lang=en.

[96] See "Egyptian journalists protest against arrests after 'raid' on union", *The Guardian*, 2 May 2016. Available from https://www.theguardian.com/world/2016/may/02/egyptian-journalists-protest-arrests-cairo.

[97] Submission from the Government of Slovenia.

[98] Samuel Li Shing Hong, "Freedom of association and assembly in the private sector for vulnerable workers in a global economy — from the Asian perspective", Asia Monitor Resource Centre, presented at United Nations expert consultation on freedom of assembly and association, 6 May 2016, p. 2.

[99] See https://www.gwu.edu/~iereesgwu/assets/docs/demokratizatsiya%20archive/10-2_Crowley.PDF, pp. 238-239.

$300 million in incentives to Volkswagen for adding a production line to a factory, but the offer was contingent on the plant remaining non-unionized (A/HRC/32/36, para. 38). In the State of Georgia in the United States, police called in by the company prevented union organizers from distributing leaflets outside the company's gates, and issued a citation that carried the comment: "picketing drivers to become union".[100] The State government of Mississippi touts the lack of unionization as a great benefit when courting potential employers. The dangers of that are exemplified by the situation at the Nissan plant in Canton, where the company has aggressively worked to prevent unions from organizing. During his official visit to the United States in July 2016, the Special Rapporteur was informed that Nissan operates 44 major plants throughout the world; all of them are unionized, except for two of them in the south of the United States.[26]

76. Violence against workers is both a reason for and a consequence of the global weakening of workers' rights to freedom of peaceful assembly and of association. In 2015, unionists were murdered in 11 countries for their activism: Chile, Colombia, Egypt, El Salvador, Guatemala, Honduras, Islamic Republic of Iran, Mexico, Peru, South Africa and Turkey.[74] Honduras has seen a plague of violence, with 31 trade unionists, 57 rural workers and 28 journalists murdered between 2009 and early 2014, while 62 trade unionists have been assassinated in Guatemala since 2008.[101] This violence is generally delivered with impunity and serves as a terrifying deterrent to workers' exercise of rights of freedom of peaceful assembly and of association.

77. At times State authorities actually bolster employers' efforts to restrict workers' peaceful assembly and association rights. In 2013, in Algeria, police violently dispersed a peaceful protest of the Contractual Workers Union at a Government compound, and arrested 20 people.[102] In Nigeria, on 19 May 2016, police beat, tear-gassed and arrested members of the Nigerian Labour Congress who were peacefully demonstrating, claiming that workers had not obtained police clearance to hold the protest.[103] The Special Rapporteur stresses that the right to peaceful assembly is fundamental; its exercise does not require the permission of the State (A/HRC/32/36/Add.1, para. 17).

78. Indonesian law states that unions have the right to strike, but police often pressure workers to end legal strikes and protests through violence or arrests. For example, 23 labour activists and 2 public defenders were arrested when several union federations protested Government Regulation on Remuneration No. 78/2015. In 2014, 17 workers in West Java were injured in an organized attack; police

[100] See Dave Jamieson, "Watch what happens when you try to unionize some truck drivers in the south", *Huffington Post*, 7 August 2016. Available from www.huffingtonpost.com/entry/unionizing-in-the-south-video_us_57893980e4b0867123e13a29.

[101] See Tula Connell, "Central American trade unionists increasingly targeted", 3 February 2014. Available from www.solidaritycenter.org/central-american-trade-unionists-increasingly-targeted/.

[102] See ConstitutionNet, "Algeria: crackdown on independent trade unions, unionists prosecuted, imprisoned for peaceful activities", 7 October 2013. Available from www.constitutionnet.org/news/algeria-crackdown-independent-trade-unions-unionists-prosecuted-imprisoned-peaceful-activities.

[103] See Cholo Brooks, "Nigerian policemen beat up labour members on peaceful protest in Ebonyi state", *Global News Network Liberia*, 19 May 2016. Available from http://gnnliberia.com/2016/05/19/nigerian-policemen-beat-labour-members-peaceful-protest-ebonyi-state/.

watched but did not stop the violence. The incident has had a chilling effect on unionization and workers' exercise of their rights.[104] The role of the military and police in monitoring and providing security services at factories has had a similar effect.[105]

79. Attempts to erode the right to strike take place both at the multilateral and national levels. In 2012, the ILO Employers' Group began arguing that the right to strike, protected by Convention 87, did not exist at all. Subsequent court decisions have dismissed employers' claims.[106] The Special Rapporteur notes the positive role played by the Government Group in upholding workers' right to strike by recognizing that "without protecting a right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be fully realized."[107]

Fulfil

80. International human rights law imposes on States the responsibility to take positive measures to ensure the exercise of rights. This means that States cannot take action to undermine rights, and that they cannot maintain a "neutral" or "hands-off" approach in response to third party actions that undermine these rights (A/HRC/32/36/Add.2, para. 68).

81. Access to effective remedies is a key issue for workers, who often lack legal recourse for rights violations. Workers in vulnerable situations may find it especially difficult to assert their rights because of structural impediments, including lack of access to labour inspectorates that often do not operate in informal and private work places; collaboration between immigration and police officials that prioritizes investigating migration status over employers' violations of rights; and restrictions that make migrant workers "unfree labour", preventing them from circulating in host countries.

82. Even migrant workers who have formal access to inspectors are reluctant to report violations for fear of deportation. In addition, migrants often have no legal rights or access to temporary accommodations to remain in country during legal procedures, thus preventing reporting and participation in legal proceedings. The lack of written contracts in the informal work environment renders it difficult to prove employment.

83. States are obligated under international law to establish accessible and effective complaint mechanisms that can promptly investigate allegations of abuses related to the rights to freedom of peaceful assembly and of association (see A/HRC/20/27, p. 19). Where those rights have been unduly restricted, victims have the right to obtain redress, including adequate compensation and sanctions against the employer (ibid.).[72] Effective remedies should be available from a range of

[104] Submission from the Federation of Indonesian Labour Struggle.

[105] Ibid.

[106] See IndustriAll Global Union, "Right to strike upheld at ILO", 26 February 2015. Available from www.industriall-union.org/right-to-strike-upheld-at-ilo.

[107] International Labour Organization, document TMFAPROC/2015/2. Available from www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_346764.pdf.

mechanisms, including judicial and non-judicial and administrative institutions, such courts, ombudsperson offices and national human rights institutions.

84. Encouraging examples of court engagement include the case of a young Togolese domestic worker held in forced labour, where the court found that the State had a duty to criminalize grave labour exploitation by private entities.[108] In Norway, workers can take legal action in court when their rights are violated. Access to court is free and free legal aid is available to those below a certain income threshold. At Service Centres for Foreign Workers, relevant government departments work together to inform foreign nationals arriving in Norway for employment of their rights and help them to promptly process their applications.[109]

3. Role of other transnational actors and factors

85. Governments and employers are not the only entities that influence workers' ability to exercise their peaceful assembly and association rights. Multilateral financial institutions may condition government loans on measures that weaken labour protections, deny workers a voice in the process and move employment towards informality. Recent International Monetary Fund loans to Romania and Greece[110] were conditioned on limiting or denying workers' rights and benefits. Meanwhile, the same financial institutions fail to enforce their own labour standards, as in Uzbekistan, where the World Bank-funded projects that benefit the Government's cotton sector are plagued by State-sponsored forced labour.[111] The Special Rapporteur notes that the World Bank recently adopted a new environmental and social framework that specifies that workers' rights must be respected in Bank-financed projects. He is concerned, however, that the labour safeguards do not reference international human rights standards and, as such, may be weakened by national laws.[112]

86. Today's trade and investment agreements regulate broad aspects of international economic and social relations, many of which affect human rights. In recent years, trade agreements negotiated by Canada, the European Union and the United States incorporated labour provisions to address worker rights failings. Although trade agreements have helped encourage some countries, such as

---

[108] See James A. Gross and Lance Compa, eds., *Human Rights in Labour and Employment Relations: International and Domestic Perspectives* (Ithaca, New York, Cornell University Press, 2009), p. 166.

[109] Submission from the Government of Norway.

[110] See International Trade Union Confederation, "IMF should stop attacks against pensions and workers' rights in Greece", 27 May 2015. Available from www.ituc-csi.org/imf-should-stop-attacks-against.

[111] See "Defending Human Rights in Development"; press release issued 14 July 2016 by the International Corporate Accountability Roundtable.

[112] See World Bank, "World Bank board approves new environmental and social framework", press release, 4 August 2016. Available from www.worldbank.org/en/news/press-release/2016/08/04/world-bank-board-approves-new-environmental-and-social-framework; see also International Trade Union Confederation, "World Bank should uphold ILO standards in new labour safeguard", 25 July 2016. Available from www.ituc-csi.org/world-bank-should-uphold-ilo.

Bahrain,[113] Oman and Peru[114] (signatories to bilateral trade agreements with the United States), to undertake legal reforms prior to ratification, they have not addressed changes required to guarantee full freedom of peaceful assembly and association, and provisions have been poorly enforced.

87. For example, despite well-documented, systematic and decades-long violations of freedom of association in Colombia, the United States signed a free trade agreement with the country in 2012. Four years later, unions, frustrated by lax enforcement and lack of political will, filed a trade complaint[115] charging widespread and ongoing violations of freedom of association in the petroleum and sugar cane sectors. Canadian unions have filed a similar complaint[116] under their country's bilateral trade agreement with Colombia.

88. Labour, environmental and human rights groups report that the Trans-Pacific Partnership Free Trade Agreement, signed by the United States and 11 Pacific Rim countries on 4 February 2016, not yet in force, was negotiated non-transparently and that its backers were primarily business lobbies.[117] Critics point out that it fails to improve on the inadequate labour rights commitments of previous agreements,[26] and extends benefits to countries like Viet Nam and Brunei, which limit political rights, civil liberties and freedom of association, and ban independent unions. Mexico is also a beneficiary, despite its record of permitting "illegitimate collective bargaining agreements (commonly known as 'protection contracts')" signed "between an employer and an employer-dominated union".[118]

89. The Special Rapporteur has previously highlighted the Trans-Pacific Partnership Free Trade Agreement's clear bias favouring the economic interests of businesses over the freedom of assembly and association rights of non-investors, giving corporations the right to challenge laws and policies that harm their investments,[119] while not affording civil society groups equal treatment (A/HRC/32/36, para. 39). The Special Rapporteur believes that the labour provisions in trade agreements are incapable of delivering sustainable improvements

[113] See Jeffrey S. Vogt, "The evolution of labour rights and trade: a transatlantic comparison and lessons for the transatlantic trade and investment partnership", *Journal of International Economic Law*, vol. 18, No. 4 (2015), pp. 18 and 838-841.

[114] Ibid., pp. 18, 837-838.

[115] See American Federation of Labour and Congress of Industrial Organizations and others, "Public submission to the Office of Trade and Labour Affairs under chapters 17 (labour) and 21 (dispute settlement) of the Colombia-United States Trade Promotion Agreement", 2016. Available from https://www.dol.gov/sites/default/files/documents/ilab/Colombia%20Final%20Word%20version%20%2800000002%29.pdf.

[116] See Canada, National Administrative Office, *Public Communication CAN 2016-1 (Colombia) — Accepted for Review*. Available from www.labour.gc.ca/eng/relations/international/agreements/colombia/2016-1.shtml.

[117] See John Nichols, "TPP prioritizes the 'rights' of corporations over workers, the environment and democracy", *The Nation*, 7 October 2015. Available from https://www.thenation.com/article/tpp-prioritizes-rights-of-corporations-over-workers-the-environment-and-democracy/; see also Fair Labour Association, "Protection contracts in Mexico", Issue Brief, March 2015. Available from www.fairlabor.org/report/protection-contracts-mexico.

[118] See Fair Labour Association, "Protection contracts in Mexico".

[119] See Trans-Pacific Partnership agreement of 4 February 2016, chap. 28. Available from https://ustr.gov/sites/default/files/TPP-Final-Text-Dispute-Settlement.pdf.

in the enabling environment for freedom of association for workers without binding enforcement mechanisms and a clear political commitment by signatory States.

90. The Special Rapporteur maintains that private multilateral bodies, such as the International Olympic Committee and the Federation Internationale de Football Association, have a responsibility to respect, if not promote, universally recognized human rights (A/69/365, para. 31). He regrets that those bodies have not taken advantage of their power and influence to press host countries of their events such as Brazil (Summer Olympics 2016) and Qatar (World Cup 2022) to uphold workers' rights, including assembly and association rights.

4. Corporate social responsibility and voluntary compliance initiatives

91. Corporate social responsibility and social auditing comprise a multimillion-dollar industry created by global businesses to monitor compliance with industry human rights standards across supply chains and at the enterprise level. Although those mechanisms have resulted in some anecdotal successes and benefited companies' public relations images, they have had little measurable impact on promoting assembly and association rights. Problems include their voluntary, non-binding nature; lack of consultation with workers and communities; audit results having little impact on business decision-making; and limited, pre-scheduled factory audits that frequently ignore freedom of association.[120] In Pakistan, for example, the Ali Enterprises garment factory was ravaged by fire, killing nearly 300 workers[121] only days after it had been audited and certified in 2012.

92. Nevertheless, the Special Rapporteur notes the positive impact that the Accord on Fire and Building Safety in Bangladesh[122] has had on improving garment workers' ability to exercise their assembly and association rights. Global brands, retailers and unions are signatories to the legally binding agreement, established in May 2013, giving garment workers a voice in improving their workplaces.

93. While there is space for corporate social responsibility initiatives, they are not a substitute for legally binding, robust enforcement of the rights to freedom of peaceful assembly and of association. Where private governance becomes the dominant means of monitoring and enforcing, already weak public inspection systems will continue to wither. Further, private mechanisms are usually incapable of providing effective remedies on a consistent basis. Recent studies on codes of conduct suggest that they can yield negative results for workers' welfare, for example in Indonesia, with similar trends in China, India and the Republic of Korea.[123] In that regard, the Special Rapporteur reiterates his support for an international human rights instrument that creates binding obligations for national and transnational corporations (A/HRC/29/25, para. 23).

---

[120] See International Labour Organization, *Decent Work in Global Supply Chains*, paras. 135-139. Available from http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_468097.pdf.

[121] See www.cleanclothes.org/safety/ali-enterprises.

[122] See http://bangladeshaccord.org/about/.

[123] Sanjiv Pandita and Fahmi Panimbang, "Global supply chains: struggle within or against them?", in Shae Garwood, Sky Croeser and Christalla Yakinthou, eds., *Lessons for Social Change in the Global Economy: Voices from the Field* (Plymouth, United Kingdom, Lexington Books, 2013).

V. Conclusions and recommendations

94. **The majority of the world's workers, particularly those in vulnerable situations, such as migrant, women and domestic workers, are disenfranchised of their rights to freedom of peaceful assembly and of association in the workplace. That disenfranchisement is the result of many factors, including the failure of much touted economic policies in reducing poverty and economic inequality; the increasing power of large multinational corporations and corresponding failure by States to effectively regulate and enforce norms and standards against those actors; the fragmentation of the workplace and diffusion of employer responsibilities across a range of actors; and the global crackdown on civil society that targets organizations and individuals working on labour issues.**

95. **Workers are entitled to the rights to freedom of peaceful assembly and of association regardless of their status within a country. Further, those rights are central to ensuring that workers can claim their rights to just and favourable conditions of work in the face of structural obstacles that keep them and their issues marginalized.**

96. **States have obligations under international human rights law to ensure that everyone within their jurisdiction is able to exercise his or her rights. Those obligations include refraining from violating workers' rights, taking positive measures to fulfil the rights and protecting against violations by third parties.**

97. **Despite that, States generally prioritize economic and corporate interests at the expense of workers' rights, a counterproductive approach that exacerbates poverty and inequality. This situation must be urgently addressed, both to allow people to exercise their rights and to ensure the viability of the world's economic system. In this spirit, the Special Rapporteur calls upon States, multilateral organizations, businesses and other stakeholders to commit themselves to creating the best possible enabling environment for the exercise of the rights to freedom of peaceful assembly and of association in the workplace. The Special Rapporteur proposes the following recommendations as steps towards realizing those goals.**

98. **The Special Rapporteur recommends that States:**

(i) **Adopt and implement all recommendations contained in his previous reports, recognizing that workers in vulnerable situations are more likely to experience violations of their rights than other groups;**

(ii) **Ratify all relevant international and regional human rights instruments that guarantee the rights to freedom of peaceful assembly and of association, as well as other rights for workers, including ILO Conventions 87 and 98;**

(iii) **Ensure that the rights to freedom of peaceful assembly and of association can be exercised in the workplace by everyone without discrimination on the basis of type of work, employment, workplace, enterprise**

or sector, immigration status or other limitations contrary to international law and standards;

(iv) Ensure policy coherence through a review and revision of national laws and policies that may adversely impact the full exercise of the rights to freedom of assembly and association;

(v) Take appropriate measures, including affirmative measures, to ensure that workers in vulnerable situations have the ability to exercise effectively their assembly and association rights. Such measures should include:

(a) Improving guest worker programmes to, among other things, eliminate structural barriers, such as coercive conditions of work visas that provide the employer inordinate control over the lives of workers;

(b) Removing impediments to freedom of movement and access to justice (for example, provide temporary immigration status while rights violations are being investigated);

(c) Regulation of financial requirements that create debt and conditions for exploitation by third parties;

(d) Actively creating an enabling environment for workers to establish independent, voluntary associations, including trade unions;

(vi) Establish and adequately resource independent mechanisms to monitor the effective protection of assembly and association rights;

(vii) Prohibiting companies that fail to respect assembly and association rights from bidding on public contracts;

(viii) Ensuring the availability of effective judicial or other appropriate remedies for the violation of peaceful assembly and association rights that are available to all and are not subject to migration status;

(ix) Devoting particular attention to protecting and promoting the assembly and association rights of migrant workers, who by virtue of their immigration status may lack other mechanisms with which to advance their political, social and economic interests;

(x) Upholding the protection of workers' assembly and association rights in bilateral and multilateral trade and investment agreements, and consulting with civil society organizations, including trade unions, to the same extent as business entities in their engagement on such agreements;

(xi) Ensuring that non-State actors, particularly businesses, comply with international human rights norms and standards, and in particular the rights to freedom of peaceful assembly and of association. Regulation mechanisms should include due diligence processes, human rights impact assessments and mandatory disclosure regimes in respect of global supply chains.

99. **The Special Rapporteur recommends that businesses (including employers, lead firms, subsidiaries, suppliers, franchisees or investors in supply chains):**

(i) **Meet their obligations to respect the rights to freedom of peaceful assembly and of association. That includes respecting the rights of all workers to form and join trade unions and labour associations and to engage in collective bargaining and other collective action, including the right to strike;**

(ii) **Refrain from anti-union policies and practices, and reprisals against workers who exercise their peaceful assembly and association rights;**

(iii) **Implement the Guiding Principles on Business and Human Rights by, among other things, making policy commitments to respect peaceful assembly and association rights and conducting due diligence in relation to human rights in respect of global supply chains.**

100. **The Special Rapporteur recommends that civil society, including trade unions:**

(i) **Create alliances across civil society to monitor the effective implementation of these recommendations;**

(ii) **Commit to the principle that labour rights are human rights, and recognize the urgent need for general human rights organizations to work on labour rights as a part of their core mandates, particularly in this era of weakening of workers' rights;**

(iii) **Trade unions specifically target outreach and advocacy at historically disenfranchised worker populations, including the full incorporation of domestic, migrant and informal workers into trade unions and bargain collective agreements;**

(iv) **Continue to advocate for equal opportunity to present their views in consultations with Governments and businesses on matters that affect workers' rights.**

101. **The Special Rapporteur recommends that the International Labour Organization:**

(i) **Pursue standard setting to ensure that workers in informal employment can enjoy the right to freedom of association and to bargain collectively;**

(ii) **Enhance policies and programmes to ensure that workers in vulnerable situations, including migrant workers, domestic workers, workers from minority groups and workers in the informal economy, can exercise their rights to freedom of peaceful assembly and of association;**

(iii) **Pursue standard setting to address governance gaps with regard to the protection of workers' assembly and association rights in global supply chains.**

102. **The Special Rapporteur recommends that the United Nations and multilateral financial institutions:**

(i) **In consultation with trade unions and worker organizations, ensure the promotion and protection of assembly and association rights in their policies and programmes, particularly with regard to policies related to**

employment, economic development, trade, migration and the rights of specific groups, including women, children, racial/ethnic minorities;

(ii) Adopt and effectively implement performance standards and safeguards in public and private lending and tendering that protect workers' assembly and association rights;

(iii) Ensure policy coherence through a thorough review and revision of policies, in consultation with trade unions and civil society that may adversely impact the full exercise of the rights to freedom of assembly and association of workers.